

shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(b) *Penalties.* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than the amount specified in § 3.91(b)(1)(xx) of this title for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available by law or in equity.

[49 FR 11816, Mar. 28, 1984, as amended at 70 FR 29579, May 24, 2005]

**§ 1150.157 Assessment exemption.**

(a) A producer described in § 1150.152 (a) and (b) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, a producer pursuant to § 1150.152 (a) and (b) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the pro-

ducer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If a producer described in § 1150.152 (a) and (b) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152.

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152 shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172.

(g) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not

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qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2753, Jan. 14, 2005]

### PROMOTION, RESEARCH AND NUTRITION EDUCATION

#### **§ 1150.161 Promotion, research and nutrition education.**

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§1150.139, 1150.140 and this section. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research and nutrition education with respect to milk and dairy products; and

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of milk and dairy products and the creation of new products thereof, to the end that marketing and utilization of milk and dairy products may be encouraged, expanded, improved or made more acceptable. Included shall be research and studies of proposals intended to increase the use of fluid milk and dairy products by the military and by persons in developing nations and proposals intended to demonstrate the feasibility of converting nonfat dry milk to casein for domestic and export use.

(b) Each plan or project authorized under §1150.161(a) shall be periodically reviewed or evaluated by the Board to insure that the plan or project contributes to an effective program of promotion, research and nutrition education. If it is found by the Board that any such plan or project does not further the purposes of the Act, the Board shall terminate such plan or project.

(c) No plan or project authorized under §1150.161(a) shall make use of unfair or deceptive acts or practices with

respect to the quality, value or use of any competing product.

### REPORTS, BOOKS AND RECORDS

#### **§ 1150.171 Reports.**

Each producer marketing milk of that producer's own production directly to consumers and each person making payment to producers and responsible for the collection of the assessment under §1150.152 shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(a) The quantity of milk purchased, initially transferred or which, in any other manner, are subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The basis, if necessary, to show why the remittance is less than the number of hundredweights of milk multiplied by 15 cents; and

(d) The date any assessment was paid.

#### **§ 1150.172 Books and records.**

Each person who is subject to this subpart, and other persons subject to §1150.171, shall maintain and make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

#### **§ 1150.173 Confidential treatment.**

All information obtained from such books, records or reports under the Act and this subpart shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting agencies having access to such information, and